STATE OF MICHIGAN

COURT OF APPEALS

THE HEALING PLACE AT NORTH OAKLAND MEDICAL CENTER, THE HEALING PLACE, LTD, NEW START, INC, and EDGAR NAYLOR,	FOR PUBLICATION October 23, 2007 9:00 a.m.
Plaintiff-Appellants,	
v	No. 272960 Oakland Circuit Court
ALLSTATE INSURANCE COMPANY,	LC No. 2005-065333-NF
Defendant-Appellee.	Official Reported Version

Before: Smolenski, P.J., and Wilder and Zahra, JJ.

WILDER, J.

In this dispute concerning first-party, no-fault automobile personal protection insurance benefits, plaintiffs appeal as of right the trial court's grant of summary disposition to defendant Allstate Insurance Company. The key issue is whether the services at issue were "lawfully render[ed]" under MCL 500.3157. We affirm.

I

A

In 1995, plaintiff Edgar Naylor was struck by a car while he was riding a bicycle. At the time, Naylor had automobile insurance through Allstate. As a result of the accident, Naylor allegedly suffered a brain injury or "closed head injury." In addition to problems allegedly caused by the brain injury, Naylor had a substance abuse problem that predated the accident. After the accident, Naylor received treatment from plaintiffs New Start, Inc., and The Healing Place, Ltd.

In 2004, after serving a prison sentence of several years, Naylor admitted himself to the program offered by New Start, The Healing Place, and The Healing Place at North Oakland Medical Center (THP at NOMC), wherein, in 2004 and 2005, he received various services as part of an integrated treatment for brain injury, psychiatric disorders, and substance abuse.

Plaintiffs[1] then submitted claims to Allstate for first-party, no-fault automobile personal protection insurance benefits for those services. Allstate denied the claims.

B

In October 2004, plaintiffs commenced this action for breach of contract and declaratory relief. In June 2006, Allstate moved for summary disposition under MCR 2.116(C)(8) and (10), arguing that plaintiffs were not properly licensed to render the treatment they gave, and that the services were therefore not "lawfully render[ed]" under MCL 500.3157. Accordingly, Allstate argued, the services were not compensable as personal protection insurance benefits. Allstate also argued that because Naylor's substance abuse problems predated the accident, they were not related to the accident. Finally, Allstate argued that the fees sought were not reasonable.

In ruling on Allstate's motion, the trial court first noted that plaintiffs had the burden to prove that the services were reasonably necessary for Naylor's care and that they did not present any evidence of the nature of the services rendered. Absent such evidence, the trial court concluded, there can be no finding of liability. The trial court also concluded that plaintiffs failed to prove that the services were lawfully rendered. For these reasons, the trial court granted Allstate's motion under MCR 2.116(C)(10).

II

We review rulings on motions for summary dispositions de novo. *Willett v Waterford Charter Twp*, 271 Mich App 38, 45; 718 NW2d 386 (2006). To the extent that this dispute requires us to interpret the parties' insurance contract, the proper interpretation of a contract is a question of law, *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003); *Randolph v Reisig*, 272 Mich App 331, 333; 727 NW2d 388 (2006), that we review de novo, *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). To the extent that this dispute requires us to engage in statutory interpretation, the interpretation of a statute is also a question of law that we review de novo. *Newton v Bank West*, 262 Mich App 434, 437; 686 NW2d 491 (2004).

"Summary disposition under either MCR 2.116(C)(8) or (C)(10) presents an issue of law for [the Court's] determination and, thus, [the Court] review[s] a trial court's ruling on a motion for summary disposition de novo." *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004) (internal quotation marks and citation omitted). Where the parties rely on documentary evidence, appellate courts proceed under the standards of review applicable to a motion made under MCR 2.116(C)(10). *Krass v Tri-County Security, Inc*, 233 Mich App 661, 665; 593 NW2d 578 (1999).

A motion made under MCR 2.116(C)(10) tests the factual support for a claim, *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003), and should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). When the burden of proof at

[1] Hereinafter, we shall use "plaintiffs" to refer collectively to New Start, The Healing Place, and THP at NOMC.

trial would rest on the nonmoving party, the nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v Cross & Peters Co,* 451 Mich 358, 362; 547 NW2d 314 (1996); *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001). A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue upon which reasonable minds could differ. *West v Gen Motors Corp,* 469 Mich 177, 183; 665 NW2d 468 (2003).

When deciding a motion for summary disposition under this rule, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Ritchie-Gamester v City of Berkley,* 461 Mich 73, 76; 597 NW2d 517 (1999). But such materials "shall only be considered to the extent that [they] would be admissible as evidence . . . ." MCR 2.116(G)(6); *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002); *Campbell v Kovich,* 273 Mich App 227, 230; 731 NW2d 112 (2006).

III

A

Under MCL 500.3107(1)(a), personal protection insurance benefits are payable for all "reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." In addition, MCL 500.3157 provides: "A physician, hospital, clinic or other person or institution lawfully rendering treatment to an injured person for an accidental bodily injury covered by personal protection insurance . . . may charge a reasonable amount for the products, services and accommodations rendered." In *Cherry v State Farm Mut Automobile Ins Co*, 195 Mich App 316, 320; 489 NW2d 788 (1992), the Court read § 3107 in conjunction with § 3157, and concluded that "the Legislature intended that only treatment lawfully rendered, including being in compliance with licensing requirements, is subject to payment as a no-fault benefit."

As established by *Nasser v Auto Club Ins Ass'n*, 435 Mich 33, 49-50; 457 NW2d 637 (1990), it is plaintiffs' burden to prove that the services provided by New Start, The Healing Place, and THP at NOMC were compensable. In its motion for summary disposition, Allstate argued that the services provided by plaintiffs were not "lawfully render[ed]," MCL 500.3157, and thus not compensable, because New Start, The Healing Place, and THP at NOMC were not licensed to perform the services rendered. Specifically, Allstate argued that THP at NOMC was required to be licensed as a psychiatric hospital unit, that The Healing Place had no license at all, and that New Start provided services that required a license to operate an adult foster-care facility. Allstate also argued that plaintiffs failed to show that the services rendered were reasonable and necessary.

In support of its motion, Allstate presented both documentary evidence and deposition testimony. Allstate's documentary evidence established that THP at NOMC held a license for residential substance abuse services and was not licensed as a psychiatric unit, that New Start was licensed as an outpatient substance-abuse program and not as an adult foster-care facility, and that a New Start representative sent a letter to Naylor's parole officer intimating, if not

representing, that THP at NOMC and New Start held licenses that they did not in fact hold. Allstate also presented the deposition testimony of Dr. Thomas Kane and Roman Frankel establishing that the services rendered were in the nature of psychiatric services and adult foster care (i.e., outside the operating licenses). This evidence was sufficient to meet Allstate's burden as the moving party. Despite their ultimate burden under *Nasser* to prove that the services rendered were compensable, plaintiffs presented only a paucity of evidence to rebut Allstate's arguments.

B

We hold, on the existing record and as a matter of law, that the services provided by plaintiffs were not "lawfully render[ed]," MCL 500.3157, because New Start, The Healing Place, and THP at NOMC were not licensed to perform the services rendered. The relevant inquiry in determining whether a particular service was lawfully rendered for purposes of MCL 500.3157 depends on a construction of the statutory language "lawfully rendering treatment[.]" MCL 500.3157. "'Well-established principles guide this Court's statutory [or court rule] construction efforts. We begin our analysis by consulting the specific [statutory] language at issue.'" *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 458; 733 NW2d 766 (2006), quoting *Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 10; 654 NW2d 610 (2002). "This Court gives effect to the Legislature's intent as expressed in the statute's terms, giving the words of the statute their plain and ordinary meaning." *McManamon v Redford Charter Twp*, 273 Mich App 131, 135; 730 NW2d 757 (2006), citing *Willett, supra* at 48. "When the language poses no ambiguity, this Court need not look beyond the statute or construe the statute, but need only enforce the statute as written." *McManamon, supra* at 136. "This Court does not interpret a statute in a way that renders any statutory language surplusage . . . ." *Id.*, citing *Pohutski v City of Allen Park*, 465 Mich 675, 684; 641 NW2d 219 (2002).

MCL 500.3157 provides: "*[A] physician, hospital, clinic or other person or institution lawfully rendering treatment* to an injured person . . . may charge a reasonable amount . . . ." (Emphasis added.) The statute focuses on natural persons (such as physicians) *or* institutions. We find no basis in the language of this section to conclude that the phrase "lawfully rendering treatment" permits an institution providing treatment to avoid licensure on the basis that a natural person providing the treatment at the institution is licensed. Similarly, the fact that an institution is licensed would not permit an unlicensed individual to provide treatment at the institution's facility. In our judgment, the plain language of MCL 500.3157 requires that before compensation for providing reasonable and necessary services can be obtained, the provider of treatment, whether a natural person or an institution, must be licensed in order to be "lawfully rendering treatment." If both the individual and the institution were each required to be licensed and either was not, the "lawfully render[ed]" requirement would be unsatisfied.

Another Michigan statute sheds light on the no-fault statute's "lawfully render[ed]" requirement. MCL 450.225 provides a "legally authorized to render" requirement: "A corporation . . . shall not render professional services . . . except through . . . agents who are duly licensed or otherwise legally authorized to render the professional services . . . ." (Emphasis added.) Thus, MCL 450.225 has a requirement similar to the "lawfully render[ed]" requirement of MCL 500.3157 that specifically states or suggests that the agent who renders the service must

be licensed in order to satisfy the requirement. In contrast, MCL 500.3157 does not expressly state or suggest that the agent must be licensed in order to satisfy the "lawfully render[ed]" requirement. Rather, MCL 500.3157 focuses on either the agent or the institution "lawfully rendering" treatment. In short, under MCL 500.3157, if both the individual and the institution were each required to be licensed and either was not, the "lawfully render[ed]" requirement would be unsatisfied.

In addition, MCL 550.1105(4), part of the Nonprofit Health Care Corporation Reform Act, defines "health care provider" to include

> a health care facility; *a person licensed*, certified, or registered under parts 161 to 182 of Act No. 368 of the Public Acts of 1978, as amended, being sections 333.16101 to 333.18237 of the Michigan Compiled Laws; any other person or facility, with the approval of the commissioner, who or which meets the standards set by the health care corporation for all contracting providers; and, for purposes of section 414a, any person or facility who or which provides intermediate or outpatient care for substance abuse, as defined in section 414a. [MCL 550.1105(4) (emphasis added).]

In so providing, § 1105(4) clearly provides that an unlicensed provider is not a health care provider. Reasoning by analogy, the no-fault act must be read to provide that if both the individual who provided services and the institution to which the individual belonged were each required to be licensed, and either was not, the "lawfully render[ed]" requirement is not met.

C

The dissent relies on *Miller v Allstate Ins Co (On Remand)*, 275 Mich App 649, 657-658; 739 NW2d 675 (2007). We find *Miller* distinguishable, because it considered only whether mere defects in corporate structure would render treatment provided by the incorrectly incorporated entity not "lawfully render[ed]" under MCL 500.3157.

D

Because we find that the trial court correctly granted summary disposition on the basis that the services in question were not "lawfully render[ed]," plaintiffs' remaining issues are moot. *Ewing v Bolden*, 194 Mich App 95, 104; 486 NW2d 96 (1992).

IV

For the foregoing reasons, we affirm the trial court's summary disposition in Allstate's favor.

Zahra, J., concurred.

/s/ Kurtis T. Wilder
/s/ Brian K. Zahra